Exhibit 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREA TANTAROS Plaintiff, v. FOX NEWS NETWORK, LLC, ROGER AILES, WILLIAM SHINE, IRENA BRIGANTI, PETER A. SNYDER, DISRUPTOR, INC., and JOHN DOES 1-50. Defendants.	Case No. 17-cv-02958 (JGK) ORAL ARGUMENT REQUESTED

PETER A. SNYDER AND DISRUPTOR, INC.'S NOTICE OF MOTION SEEKING SANCTIONS PURSUANT TO RULE 11

PLEASE TAKE NOTICE that, upon all papers served and proceedings had herein, including the letter from Randy Mastro, Counsel for Peter A. Snyder and Disruptor, Inc., ("Moving Defendants") dated April 28, 2017, exhibits thereto, the instant Notice of Motion, and such other and further papers and proceedings as may be filed or had, Moving Defendants will move this Court at a time and date to be determined by this Court, before the Honorable John G. Koeltl, United States District Judge, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 12B, New York, NY 10007, for an order imposing sanctions against Plaintiff Andrea Tantaros and her counsel, Judd Burstein, pursuant to Rule 11(c) of the Federal Rules of Civil Procedure, for the filing of Plaintiff's Complaint (Dkt. 1). Specifically, Moving Defendants will seek an order awarding sanctions, dismissing the Complaint with prejudice, awarding attorneys' fees and costs incurred by Moving Defendants as a result of violations of Rule 11, and granting such other and further relief as the Court deems just and proper.

Moving Defendants bring this motion on the grounds that Plaintiff and her counsel violated Rule 11 of the Federal Rules of Civil Procedure by willfully presenting to the Court a Complaint that **(a)** contains fabricated and self-contradictory allegations concerning Moving Defendants based on pure speculation and lacking any evidentiary support in violation of Fed. R. Civ. P. 11(b)(3); **(b)** mischaracterizes pre-litigation communications between Plaintiff's counsel and Moving Defendants' counsel in a false and nonsensical manner in further violation of Fed. R. Civ. P. 11(b)(3); **(c)** presents legal claims that are untenable as a matter of law as to Moving Defendants because such claims are time-barred and have no chance of success in violation of Fed. R. Civ. P. 11(b)(2); **(d)** was filed for the improper purpose of publicly smearing all Defendants (including Moving Defendants) in violation of Fed. R. Civ. P. 11(b)(1); **(e)** was filed for the improper purpose of avoiding confidential arbitration in violation of the broad arbitration clause in Plaintiff's employment agreement with Fox News and the New York Supreme Court's order compelling confidential arbitration of her harassment and retaliation claims in *Tantaros v. Fox News Network, LLC*, No. 157054/2016, ECF No. 74 (Sup. Ct. N.Y. Cty. Mar. 9, 2017), *see* Fed. R. Civ. P. 11(b)(1); and **(f)** is a blatant strike suit filed for the improper purpose of extorting a settlement from Moving Defendants in violation of Fed. R. Civ. P. 11(b)(1).

Dated: New York, New York
April 28, 2017

GIBSON, DUNN & CRUTCHER LLP

By: _____

Randy M. Mastro
Mylan L. Denerstein
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New York, New York 10166-0193
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April 28, 2017

VIA EMAIL AND HAND DELIVERY

Judd Burstein, Esq.
5 Columbus Circle
1790 Broadway
New York, NY 10019

Re: Defendants Peter Snyder and Disruptor, Inc.'s Notice of Motion Seeking Sanctions Pursuant to Federal Rule of Civil Procedure 11 ("Rule 11") in *Tantaros v. Fox News Network, LLC, et al.*, No. 17-cv-02958 (S.D.N.Y.)

Dear Counsel:

As you are aware, we are counsel for Peter Snyder and the company he founded, Disruptor, Inc. I write to provide you with the enclosed Notice of Motion Seeking Sanctions Pursuant to Rule 11 (the "Notice of Motion"), and hereby demand that you withdraw your offending Complaint against our clients, pursuant to Rule 11's safe harbor provisions.[1] Indeed, I warned you before you filed this spurious Complaint that you and your client are way off base, that the allegations you described to me and intended to make against our clients were false, time-barred, and subject to arbitration in any event, and that we would hold you and your client accountable if you proceeded anyway. Now, I have read the Complaint you filed against our clients; it truly is an outrage, and you could not have filed it in good faith. Hence, if you do not withdraw all claims and allegations against our clients, we intend to file Rule 11 sanctions against you and your client.

As you know, Rule 11 of the Federal Rules of Civil Procedure imposes a duty to present factual allegations that "have evidentiary support," Fed. R. Civ. P. 11(b)(3), legal claims that are "warranted by existing law," Fed. R. Civ. P. 11(b)(2), and prohibits filings made "for any improper purpose," Fed. R. Civ. P. 11(b)(1). The Complaint filed in this case, however,

[1] In accordance with Federal Rule of Civil Procedure 11(c) and the Second Circuit's decision in *Star Mark Management Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170 (2d Cir. 2012), this Letter and the enclosed Notice of Motion, together with the authorities cited in each, "describe the specific conduct that allegedly violates Rule 11(b)," and qualify as a "motion for sanctions" against you and your client, Andrea Tantaros, as the parties responsible for the filing of the baseless, frivolous, and vexatious allegations in the Complaint (Dkt. 1).

demonstrates that you and your client wholeheartedly abandoned any attempt to comply with your Rule 11 duties:

a) The Complaint's allegations against our clients are not merely lacking "evidentiary support," but are completely fabricated and based on flimsy conjecture;

b) The Complaint mischaracterizes the pre-litigation communications between you and me in a false and nonsensical manner;

c) The Comlaint's legal claims against our clients are untenable as a matter of law because they are implausible, based on self-contradictory allegations, and time-barred;

d) The Complaint was filed for the improper purpose of publicly smearing all Defendants;

e) The Complaint was filed in clear violation of both the extremely broad confidential arbitration clause in Ms. Tantaros' employment agreement with Fox News and the New York Supreme Court's order compelling confidential arbitration of her harassment and retaliation claims against certain Defendants in this action; and

f) The Complaint is a blatant strike suit intended to shake down the Defendants for money.

For all these reasons, sanctions against you and your client will be warranted if you refuse to withdraw your Complaint against our clients. Whatever your issues with the other Defendants here, you should have left our clients out of it, and your failure to do so will now subject you and your client to sanctions if you fail to satisfactorily respond to this notice letter.

Sanctions Are Warranted Under Rule 11(b)(3) Because the Complaint Is Self-Contradictory and Based Entirely on Speculation and Conjecture

You have failed to perform your duty to confirm that, after "an inquiry reasonable under the circumstances[,] . . . the factual contentions [in the Complaint] have evidentiary support." Fed. R. Civ. P. 11(b)(3). A complaint's assertions based completely on "speculation and conjecture," unsupported by "tangible evidence" and "grossly mischaracteriz[ing]" a defendant's actions will result in the imposition of sanctions. *Binghamton Masonic Temple, Inc. v. Bares*, 168 F.R.D. 121, 127–29 (N.D.N.Y. 1996) (inferring improper purpose from complete lack of factual and legal basis for bringing a claim; holding plaintiffs' claims had

no chance of success and were frivolous; and awarding monetary sanctions for attorney fees and nonmonetary sanction of requiring attorneys to seek leave from court before filing papers). Furthermore, "[a] baseless factual contention poses a greater threat to justice than a baseless legal contention," and thus warrants severe sanctions. *In re Sept. 11th Liab. Ins. Coverage Cases*, 243 F.R.D. 114, 124, 128, 132 (S.D.N.Y. 2007) ("factual contention" that was "objectively without rational basis" and "utterly lacking in support" warranted imposition of sanctions for $750,000); *see also Shetiwy v. Midland Credit Mgmt.*, 2014 WL 3739512, at *3 (S.D.N.Y. July 29, 2014) (finding that Rule 11 was violated where attorneys "fail[ed] to ensure a factual basis for each of their allegations").

Here, the Complaint's lone attempt to connect our clients to Ms. Tantaros' harassment is based upon the type of truly fantastical "speculation," "conjecture," and "mischaracterization" that is sanction-worthy. *Binghamton Masonic*, 168 F.R.D. at 127. The Complaint's sole basis for our clients' alleged involvement with the harassment scheme is that on April 18, 2017, at 11:13 pm EST, "just one hour and 17 minutes after Ms. Tantaros' counsel informed Snyder's counsel that Ms. Tantaros was going to be suing Snyder in the next day or two, Nomiki Konst sent out a defamatory Tweet in which she falsely claimed that Ms. Tantaros had physically assaulted and threatened her." ¶ 80(f). The logical leap required here—that Mr. Snyder immediately took this information to Fox News and coordinated retribution—is not only astounding (and unfounded), but belied by the actual record, which the Complaint mischaracterizes.[2]

On Monday, April 17, we spoke on the phone, and I asked for additional time to consult with my client because I had just been retained three days ago. On that call, I advised you that neither Mr. Snyder nor any of his companies had performed any social media work for Fox News since 2012, and that there could not have been related conduct on our clients' part within the applicable statute of limitations period. You responded that you needed to consult with your client. Later that same day, at 2:02 pm, you emailed me that your client would not agree to any additional time and that you would be sending a demand letter. Ex. A. That same day, April 17, 2017, at 3:13 pm, you sent a demand letter for $15 million to be paid by "no later than 5:00 pm on April 18, 2017." Ex. B. You knew that the demand was not only preposterous, but the timing was ludicrous, given your statement: "I know I am asking for a big number. . . . I wish I had the freedom to be more generous with timing, but it is out of my hands." *Id.* It was therefore clear to everyone by 5:00 pm on April 18, 2017, that litigation would commence—a sentiment that I further clarified in my email response to you

[2] Notably, the Complaint does not allege that Disruptor, Inc. played any role in this alleged event. Its inclusion in this action is therefore meritless because, as discussed herein, the allegations against it are implausible and time-barred.

at 7:45 pm. Ex. C. In fact, you had written directly to Mr. Snyder on April 10 and threatened litigation if he did not accede to your shakedown, so it was clear you were intending to sue him as early as April 10. Ex. D.[3] It is entirely speculative that Mr. Snyder as a result of this had any role whatsoever in a Tweet by third-party Nomiki Konst at 11:13 pm on April 18: There is absolutely no temporal (or causal) connection between our correspondence and the Tweet sent that night by a person unaffiliated to Mr. Snyder or Disruptor, Inc. Even more bizarre, the Tweet by Ms. Konst describes Ms. Tantaros' alleged assault of her. It has nothing to do with Mr. Snyder whatsoever. And neither does the purported retweeting by another party, Oliver Darcy, unconnected to our clients.

As I explained to you in our correspondence, "Pete Snyder long ago sold his social media company (New Media Strategies) and has done no social media-related work for Fox in many years, let alone any 'ongoing' activity relating to Andrea Tantaros." Ex. C. You directly sent my client an email on April 10, 2017, accusing him of operating an "ongoing abusive, disturbing, exploitative and frankly, horrific social-media influence campaign targeting Andrea Tantaros on behalf of Fox News under the direction of Bill Shine and Roger Ailes," Ex. D, yet the only supposed "evidentiary support" you offer for this wild allegation is the timing of a third-party Tweet from eight days *after* your initial accusations, Rule 11(b)(3). This is precisely the type of "factual contention" that is "objectively without rational basis" and "utterly lacking in support," warranting sanctions. *In re Sept. 11th Liab.*, 243 F.R.D. at 128.

Even more, the Complaint's futile attempt to tie Mr. Snyder and Disruptor, Inc. to the harassment of Ms. Tantaros is inherently ***self-contradictory***. "Self-contradictory assertions . . . clearly lack reasonable evidentiary support, in violation of Rule 11(b)(3)." *Colliton v. Cravath, Swaine & Moore LLP*, 2008 WL 4386764, at *13–14 (S.D.N.Y. Sept. 24, 2008) (granting motion to dismiss complaint including intentional infliction of emotional distress claim, finding inconsistencies between versions of the complaint and intent to harass and possibly extort a settlement), *aff'd*, 356 F. App'x 535 (2d Cir. 2009).

Here, the Complaint and the contemporaneous emails attached to it depict Mr. Snyder trying to *help* Ms. Tantaros, not hurt her. The Complaint states that "Ms. Tantaros and the Snyders were friendly enough that Ms. Tantaros stayed at Snyder's Nantucket home on a number of occasions." ¶ 74. It includes a March 2014 email in which Mr. Snyder reaches out to Ms. Tantaros after she had asked Mr. Snyder for advice in forming a strategy and then attending

[3] After sending this incredible email directly to Mr. Snyder on April 10, you then republished it almost verbatim in the complaint you filed on April 19 in the action captioned *Tantaros v. Konst*, No. 153637-2017 (Sup Ct. N.Y. Cty.). Your threat to publicize such salacious smears, even though false, coupled with your demand for $15 million on such a short deadline, leaves no doubt the intention here was to coerce Mr. Snyder into a settlement to avoid adverse publicity, which is tantamount to extortion.

internal Fox News meetings by her side, as Ms. Tantaros sought to increase her role and influence at Fox News by trying to convince Roger Ailes and Fox News executive John Moody to give her a key role in driving a new digital strategy for the channel. Compl. Ex. JJ. As Ms. Tantaros' friend, Mr. Snyder was happy to lend a hand, even though he was paid by neither Ms. Tantaros nor Fox News for digital consulting. *Id.* Indeed, contemporaneous emails sent and received by your client in late 2013 and early 2014—all presumably available to her and you—corroborate that she sought, and Mr. Snyder provided, advice as a friend to her in furtherance of her attempts to advance her career at Fox News through a digital initiative. *See* Exs. E, F. The Complaint also states that Mr. Snyder "once tried to hire [Ms. Tantaros] to run [New Media Strategies'] public affairs department." ¶ 74. Considering that the Complaint expressly admits that Mr. Snyder's purported 2013 consulting work for Fox News did *not* include using "digital tools to attack Fox News employees, let alone women who had claimed to have been sexually harassed by Ailes or O'Reilly," ¶ 75, the natural (and correct) implication would be that Mr. Snyder had nothing to do with any alleged harassment of Ms. Tantaros. Indeed, the facts will show that Mr. Snyder did not have *any* paid consulting relationship whatsoever with Fox News after 2012.

Sanctions Are Warranted Under Rule 11(b)(2) Because the Complaint Is Time-Barred and Has No Chance of Success Against Our Clients

As I explained to you last week, Plaintiff's claims are time-barred. The statute of limitations is two years for Plaintiff's 18 U.S.C. § 2511 claim, *see* 18 U.S.C. § 2520(e), and one year for her intentional infliction of emotional distress claim. *See Ahmed v. Purcell*, 2016 WL 1064610, at *4 (S.D.N.Y. Mar. 14, 2016) ("It is well established under New York law that a claim of intentional infliction of emotional distress has a one-year statute of limitations. . . . Thus, when a court assesses such a claim, it can only consider the defendant's behavior in the year before the claim was filed." (internal citations and quotations omitted)). Here, our clients have not performed any consulting work for Fox News ***since 2012***—rendering Plaintiff's claims untimely by several ***years***. Indeed, courts frequently impose Rule 11 sanctions where plaintiffs advance time-barred claims. *See, e.g.*, *Norris v. Grosvenor Mktg. Ltd.*, 803 F.2d 1281, 1288 (2d Cir. 1986) (Rule 11 sanctions warranted where plaintiff's claims were clearly time-barred); *Voiceone Commc'ns, LLC v. Google Inc.*, 2014 WL 10936546, at *13 (S.D.N.Y. Mar. 31, 2014) (granting motion for sanctions where plaintiffs filed multiple time-barred claims).

Further, Ms. Tantaros' claims are not "warranted by existing law" because it is "'patently clear that [Plaintiff's] claim[s] ha[ve] absolutely no chance of success.'" *Binghamton Masonic*, 168 F.R.D. at 126 (quoting *Sussman v. Bank of Isr.*, 56 F.3d 450, 457 (2d Cir. 1995)). Because, as discussed above, the Complaint does not plausibly allege any non-conclusory facts showing that our clients participated in the scheme to harass Ms. Tantaros,

its claims fail as a matter of law under clear Supreme Court precedent—the *Iqbal* and *Twombly* pleading standards. *See, e.g.*, *PetEdge, Inc. v. Garg*, 2017 WL 564088, at *12 (S.D.N.Y. Feb. 10, 2017) (plaintiff failed to meet the "plausibility" pleading standard in a case against a consulting company's CEO when it alleged "conclusory allegations regarding [defendant's] direct involvement in the alleged scheme" without offering any concrete evidence); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007) ("Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.").

Sanctions Are Warranted Under Rule 11(b)(1) Because the Complaint Is a Transparent Attempt to Avoid Court-Ordered Confidential Arbitration and Is an Impermissible Strike Suit

Plaintiff's claims were also brought for the "improper purpose[s]" of harassing our clients into a quick settlement or forcing them to undertake vexatious litigation that is properly subject to confidential arbitration. Fed. R. Civ. P. 11(b)(1).[4] Courts typically apply sanctions under Rule 11(b)(1) where, as here, a plaintiff attempts to re-litigate an issue in a new venue or to avoid arbitration. *See, e.g.*, *Manwani v. Brunelle,* 99 F.3d 400 (2d Cir. 1995) (discussing imposition of Rule 11 sanctions against plaintiff who attempted to relitigate in E.D.N.Y. a New York State court order compelling arbitration); *Ginther v. Provident Life & Cas. Ins. Co.*, 350 F. App'x 494, 496 (2d Cir. 2009) (affirming sanctions against plaintiff who, among other things, "imported frivolous . . . allegations from his state case into . . . federal litigation," which harassed defendant, "delay[ed] the conclusion of th[e] case, and needlessly increase[d] the cost of litigation").[5] Indeed, federal statute provides that "any person . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927.

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[4] Rule 11(b)(1) states: "By presenting to the court a pleading . . . an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation." Fed. R. Civ. P. 11(b)(1).

[5] *See also Amorosa v. Ernst & Young LLP*, 2010 WL 245553, at *5 (S.D.N.Y. Jan. 20, 2010) (imposing sanctions where "plaintiff . . . filed a repetitive suit"); *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F. Supp. 654, 666 (S.D.N.Y. 1997) (imposing sanctions where "plaintiff's counsel had no reasonable basis for filing the instant action given [plaintiff's] clear obligation to arbitrate her claims against the defendants" because a prior court order "explicitly held that 'the arbitration clause at issue governs *any* claims related to [plaintiff's] employment with [defendant]'" (emphasis in original) (internal citations omitted)), *aff'd*, 173 F.3d 844 (2d Cir. 1999).

As you are well aware, Justice Cohen of the New York Supreme Court ordered that Ms. Tantaros' harassment and retaliation claims against *all* parties, including non-signatories to her employment agreement and individual defendants, belong in arbitration. *See* So-Ordered Transcript at 36:14–38:19, *Tantaros v. Fox News Network, LLC*, No. 157054/2016, ECF No. 74 (Sup. Ct. N.Y. Cty. Mar. 9, 2017). As already determined in the related state court case, the claims in the present case must also be arbitrated because they directly relate to Ms. Tantaros' employment with Fox News, and therefore fall under the broad arbitration clause in her employment agreement:

> Any controversy, claim or dispute arising out of or relating to this Agreement or your employment shall be brought before a mutually selected three-member arbitration panel and held in New York City in accordance with the rules of the American Arbitration Association then in effect. . . . Such arbitration, all filings, evidence and testimony connected with the arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence. . . . . Breach of confidentiality by any party shall be considered to be a material breach of this Agreement.

Ex. G.[6] Indeed, with respect to the individual defendants, Justice Cohen held:

> All of the individual defendants, ***though they are not signatories to the arbitration agreement, can invoke the arbitration clause and compel arbitration***. This would apply even if the claims against them were severed from the claims against Fox. ***The misconduct alleged by plaintiff relates to these individual's behavior as*** officers, directors and employees or ***agents of Fox***, and they necessarily relate to their alleged conduct as agents of Fox News. Further, a careful review of the claims against the individual defendants shows that ***these claims are factually intertwined with the agreement and the claims against Fox News. The claims against the individual defendants involve the very same issues and circumstances***. This principle applies equally to the employment claims and the tortious interference claims at issue in this case. Allowing such claims to proceed in court would be contrary to established public policy strongly favoring arbitration of such disputes.

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[6] Ex. G represents the portion of Ms. Tantaros' Employment Agreement that is on the public record in *Tantaros v. Fox News Network, LLC*, No. 157054/2016, ECF No. 74 (Sup. Ct. N.Y. Cty. Mar. 9, 2017). Neither we nor our clients have access to a complete version; neither did Justice Cohen when he compelled arbitration in the state action.

Ex. H at 37:6–23 (emphasis added).[7] Thus, the Complaint is nothing but an attempted end-run around this ruling, as it is based on the same underlying theory: "sexual harassment" and "retaliation." *See* Compl. ¶¶ 1, 2, 4, 5, 8–10, 17, 23, 24, 26–28, 41, 43, 46, 75.[8]

Further, Justice Cohen held that Ms. Tantaros "involved the news media in this dispute in violation of the confidentiality provisions of the parties' agreement" and noted your "individual involvement in breaching that confidentiality [provision]." Ex. H at 22:4–8, 38:4–6. Your continued publicity of a "confidential arbitration," Compl. ¶ 10, in derogation of Justice Cohen's order also calls for sanctions. *See Bernard v. Galen Grp., Inc.*, 901 F. Supp. 778, 782–84 (S.D.N.Y. 1995) (sanctioning attorney for violating "confidentiality provisions" in "alternative dispute resolution context"); *see also Spoth v. M/Y SANDI BEACHES*, 2010 WL 2710525, at *6 (W.D.N.Y. July 7, 2010) (awarding plaintiff § 1927 sanctions where defendant violated an ADR plan by disclosing confidential communications made during the mediation).

Finally, sanctions are warranted here because the Complaint is nothing more than an impermissible strike suit. Judge Chin previously criticized you for "'Rambo lawyering'" when you "employed inappropriate tactics in an effort to intimidate and harass [your adversary] into resolving th[e] matter on terms that [your client] and [you yourself] found acceptable," including by "fil[ing] suit just two days" after sending a letter purportedly "in one last effort to avoid litigation." *Revson v. Cinque & Cinque, P.C.*, 49 F. Supp. 2d 686, 686–87 (S.D.N.Y. 1999), *judgment rev'd in part, vacated in part sub nom. Revson v. Cinque*

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[7] Our clients are thus entitled to arbitration pursuant to Ms. Tantaros' employment agreement with Fox News because the Notice of Litigation and Complaint make clear that our clients' alleged actions were undertaken as agents of Fox News. *See* Ex. D ("social-media influence campaign targeting Andrea Tantaros on behalf of Fox News under the direction of Bill Shine and Roger Ailes"); *id.* ("salacious fake social media campaigns against various 'enemies,' including Ms. Tantaros, identified to you by Bill Shine at the direction of Roger Ailes"); *id.* ("fake websites and internet trolling to accomplish Fox News' goals"); Compl. ¶ 72 ("Defendant Snyder played a crucial role in Fox News's practice of using all available means to destroy whomever Ailes, and now Shine, considered to be an enemy"); *see also, e.g.*, *McKenna Long & Aldridge, LLP v. Ironshore Specialty Ins. Co.*, 2015 WL 144190, at *7 (S.D.N.Y. Jan. 12, 2015) ("[T]he corporate agent may use the arbitration provision as a sword to compel arbitration, which is to say, a shield against litigation before a court.").

[8] The Complaint includes two different versions of ¶¶ 38–44: first in Section A.II.a.i and then again spanning Sections A.II.a.ii and A.II.a.iii. This citation refers to the second versions of ¶¶ 41 and 43 in Section A.II.a.iii.

& Cinque, P.C., 221 F.3d 71 (2d Cir. 2000). Here, you gave our clients even less time to come to a decision: barely 24 hours. Such transparent gamesmanship and harassment in itself warrants sanctions. *See Smith v. Educ. People, Inc.*, 233 F.R.D. 137, 138, 143 (S.D.N.Y. 2005) (granting Rule 11 sanction where plaintiffs' conduct revealed "objective vexatious and harassing abuse of the judicial process," and their complaint "lack[ed] the necessary evidentiary support, as a reasonable inquiry *ex ante* would have revealed"), *aff'd sub nom. Smith v. Educ. People, Inc.*, 2008 WL 749564 (2d Cir. Mar. 20, 2008) (summary order).

* * *

For all the foregoing reasons, it is incumbent upon you and your client to take immediate action to rectify the sanctionable failings set forth in the accompanying Defendants' Notice of Motion.[9] I hereby demand that you withdraw all claims and allegations in the offending Complaint against our clients, Peter Snyder, and Disruptor, Inc., pursuant to Rule 11's safe harbor provisions.

Sincerely,

Randy M. Mastro

[9] Sending this letter does not constitute acceptance of service, and our clients reserve all of their rights, including to challenge personal jurisdiction and venue.

Exhibit A

[redacted]

From: Judd Burstein <JBurstein@BURLAW.COM>
Sent: Monday, April 17, 2017 2:02 PM
To: Mastro, Randy M.
Subject: RE: Your April 10 Litigation Notice

Randy:

I am sorry, but my client is immoveable. I have, however, been authorized to make a settlement proposal, which I will be forwarding to you shortly.

Judd Burstein
Judd Burstein, P.C.
5 Columbus Circle
New York, New York 10019
(212) 974-2400
(212) 974-2944 (Fax)
(917) 687-2981 (Cell)

NOTE: THIS EMAIL IS BEING SENT FROM MY NEW YORK OFFICE. PLEASE FIRST CALL THE OFFICE BEFORE CALLING MY CELL IF YOU NEED TO RESPOND BY TELEPHONE.

From: Mastro, Randy M. [mailto:RMastro@gibsondunn.com]
Sent: Friday, April 14, 2017 4:47 PM
To: Judd Burstein <JBurstein@BURLAW.COM>
Subject: Your April 10 Litigation Notice

Dear Judd,

We meet again. I have just been retained by Pete Snyder, with whom I understand you have been communicating. I further understand that you have threatened to sue him imminently on behalf of your client, Andrea Tantaros. I am new to this matter, need to get up to speed, am heading out for the holiday weekend, but will be back in my office on Monday. I'll call you then about next steps on my end as I get up to speed. And I trust in the interim you will forebear from filing anything in court so we have a full and fair opportunity to review the

matter.

Much appreciated,

Randy Mastro

Exhibit B

[redacted]

From: Judd Burstein <JBurstein@BURLAW.COM>
Sent: Monday, April 17, 2017 3:13 PM
To: Mastro, Randy M.
Subject: Tantaros

I am sending this to you without having gone through the fine print with my clients, but there should be minimal changes on our end.

I know I am asking for a big number. So if your client believes that he is innocent and can withstand the discovery process, he should just reject my proposal, and we can litigate starting Wednesday.

I wish I had the freedom to be more generous with timing, but it is out of my hands.

Best, Judd.

SETTLEMENT AND RELEASE AGREEMENT

AGREEMENT made this 18th day of April, 2017, by and between (a) Andrea Tantaros ("Tantaros") and (b) Peter A Snyder and Disruptor, Inc. (collectively "Disruptor") (and collectively with Tantaros, the "Parties"):

WHEREAS, Tantaros has informed Snyder that she intends to commence an action against him on April 12, 2017 in the United States District Court for the Southern District of New York seeking compensatory and punitive damages arising from Snyder's campaign, for which Snyder was paid by Fox News, to destroy Tantaros's reputation and cause her great emotional distress through the use of "sock" social media accounts which published false, obscene and abusive posts about Tantaros, including posts based upon information which Snyder knew to be the fruits of Fox News's illegal electronic surveillance of Tantaros; and

WHEREAS, Snyder denies all Tantaros's allegations; and

WHEREAS, Snyder nonetheless wishes to avoid the expense, time demands and negative publicity that will flow from Tantaros's planned lawsuit;

NOW, THEREFORE, in return for the mutual covenants and promises set forth herein, the parties agree as follows:

1. In full satisfaction of any and all claims that Tantaros has or may have against Disruptor, Disruptor shall wire, no later than 5:00 pm on April 18, 2017, FIFTEEN MILLION DOLLARS (US $15.000,000) to CITIBANK, 90 Park Avenue, NY, NY 10016, ABA#021-001486, Account No. 028081628, Account Name: Judd Burstein, P.C. Escrow Account.

2. Tantaros agrees that in any litigation or arbitration ("proceeding") in which she pursues any claims against third parties arising from any alleged conduct by Disruptor: (a) Disruptor shall only be identified in all pleadings as a "third party contractor employed by Fox

News" (b) Tantaros will agree to conduct all discovery with respect to Disruptor pursuant to a confidentiality agreement which will strictly limit the use or dissemination of any documents or testimony obtained from Disruptor to the subject proceeding, (c) any motions or submissions by Tantaros will refer to Disruptor as a "third party contractor employed by Fox News" unless, such as in the case of a summary judgment motion or a motion concerning discovery sought from Disruptor, it is necessary to identify Disruptor by name, and (d) Tantaros will initially file all motions which reference Disruptor under seal, so as to give Disruptor an opportunity to move (without opposition from Tantaros) to continue the seal.

3. Other than in a proceeding, Tantaros shall not discuss or even mention Disruptor's name other than to professionals employed by her or to her family.

4. Other than in a proceeding, Disruptor shall not discuss or even mention Tantaros' name other than to professionals employed by Disruptor or to Pete Snyder's family. This Paragraph 4 shall be construed to include any mention of Tantaros in any social media account maintained, hired or controlled by Disruptor.

5. If Tantaros is served with a subpoena by any third party, she shall give Disruptor notice of such subpoena as soon as practicable, and shall seek additional time to respond to any such subpoena so that Disruptor can seek to limit or quash the subpoena.

6. If Disruptor is served with a subpoena by any third party, it shall give Tantaros notice of such subpoena as soon as practicable, and shall seek additional time to respond to any such subpoena so that Tantaros can seek to limit or quash the subpoena.

7. Except with respect to the obligations set forth in this Agreement, (a) Pete Snyder, his heirs successors and assigns, and (b) Disruptor, Inc., its present and former affiliates, subsidiaries, related entities, employees, officers, directors, agents, representatives, and attorneys

("Disruptor Parties") hereby release Tantaros, her heirs, successors and assigns (Tantaros Parties") from any and all claims, demands, causes of action, rights, liens, losses, damages, obligations, and liabilities of any kind or character, whatsoever (whether known, unknown, or suspected or not suspected), at law or in equity, or otherwise, which the Disruptor Parties may now have or claim to have or to have acquired, against any of the Tantaros Parties, by reason of any matter, thing, event, condition, fact, circumstance or transaction occurring from the beginning of time to the date this Agreement is executed.

8. Except with respect to the obligations set forth in this Agreement, the Tantaros Parties hereby release the Disruptor Parties from any and all claims, demands, causes of action, rights, liens, losses, damages, obligations, and liabilities of any kind or character, whatsoever (whether known, unknown, or suspected or not suspected), at law or in equity, or otherwise, which the Tantaros Parties may now have or claim to have or to have acquired, against any of the Disruptor Parties, by reason of any matter, thing, event, condition, fact, circumstance or transaction occurring from the beginning of time to the date this Agreement is executed.

9. The parties each represent that they are entering into this Agreement knowingly and voluntarily, free of any duress or coercion.

10. Disruptor has been represented by the law firm of Gibson, Dunn & Crutcher, which has advised Disruptor as to the meaning and effect of this Agreement, and has further answered all questions which Disrupter has asked about this Agreement.

11. Tantaros has been represented by the law firm of Judd Burstein, P.C. which has advised Disruptor as to the meaning and effect of this Agreement, and has further answered all questions which Tantaros has asked about this Agreement.

12. This Agreement shall be governed by the internal laws of the State of New York without regard to any conflicts of law principles.

13. Each of the Parties irrevocably consents to the personal jurisdiction of the Courts of the State of New York

14. Any disputes arising out of or in any way related to this Agreement **must** be submitted **exclusively** to the United States District Court for the Southern District of New York or, if that Court does not have subject matter jurisdiction, to the Supreme Court of the State of New York, New York County.

DISRUPTOR, INC.

By_____ _____

PETE SNYDER

_____

ANDREA TANTAROS

Exhibit C

[redacted]

[redacted]

From: Mastro, Randy M. <RMastro@gibsondunn.com>
Sent: Tuesday, April 18, 2017 7:45 PM
To: Judd Burstein
Subject: Andrea Tantaros

It is profoundly disappointing to me that you and your client (Andrea Tantaros) are conducting yourselves this way. Let me recap where things stand.

First, on April 10, you sent our client, Pete Snyder, direct email communications, in which: (i) you personally threatened to file a lawsuit against him "within the next week;" (ii) you made accusations in that email about his personal life that have nothing to do with the viability of any legal claim you may bring on behalf of your client; (iii) you accused him of conducting an "ongoing abusive, disturbing, exploitative and frankly, horrific social-media influence campaign targeting Andrea Tantaros on behalf of Fox News under the direction of Bill Shine and Roger Ailes," even though Pete Snyder long ago sold his social media company (New Media Strategies) and has done no social media-related work for Fox in many years, let alone any "ongoing" activity relating to Andrea Tantaros; (iv) you therefore cannot possibly have any good faith basis for asserting any claim of "intentional infliction of emotional distress and prima facie tort" against Pete Snyder that would survive dismissal on the merits, under the applicable one-year statute of limitations, or both; and (v) you claimed you would file this lawsuit "in the Southern District of New York," even though you were already ordered by a New York state court judge to abide by the agreement your client signed with Fox to arbitrate any such claims under strict

confidentiality and are obviously now trying to evade that ruling in order to generate publicity adverse to Pete Snyder and others through a public filing in a transparent attempt to pressure settlement.

Next, you and I spoke on the telephone yesterday morning, I requested you forebear filing for a week while we continued to talk, you told me you knew of a negative Salon article about my client that would be coming out imminently -- obviously, because you had helped generate the story, which appeared this morning, in furtherance of your pressure campaign -- and you assured me that you would encourage your client to give us time to talk further.

Imagine my surprise, then, when you got back to me by email yesterday afternoon, informed me you could not convince your client to hold off, and then demanded $15M to settle the case.

I've seen some high-handed maneuvers over the years, but this one takes the cake. You apparently like to send "legal notice" emails like the one you sent to our client last week. So let this serve as notice to you and your client: I will not let our client be shaken down by you and your client; to our knowledge, our client has done none of the things you claim he has been doing over the past year on an "ongoing" basis "on behalf of Fox News under the direction of Bill Shine and Roger Ailes;" you and your client have no good faith basis for alleging in court any such thing; and we intend to hold you and your client accountable if you proceed with any such bad faith public filing.

From: Judd Burstein <JBurstein@BURLAW.COM>
Sent: Monday, April 17, 2017 3:13 PM
To: Mastro, Randy M.
Subject: Tantaros

I am sending this to you without having gone through the fine print with my

clients, but there should be minimal changes on our end.

I know I am asking for a big number. So if your client believes that he is innocent and can withstand the discovery process, he should just reject my proposal, and we can litigate starting Wednesday.

I wish I had the freedom to be more generous with timing, but it is out of my hands.

Best, Judd.

Exhibit D

[redacted]

[redacted]

Begin forwarded message:

From: Judd Burstein <JBurstein@BURLAW.COM>
Date: April 10, 2017 at 12:38:17 PM EDT
To: "Pete@Disruptor.com" <Pete@Disruptor.com>
Subject: Corrected version (for typos) of my prior email

Dear Mr. Snyder:

As you are probably already aware due to the nature of your work, I am the attorney for Andrea Tantaros.

I am writing to you directly because I do not know if you are represented by counsel and, if so, who that counsel may be. If you are represented by counsel, please forward this email to him or her, with a copy to me so that I will know who I should communicate with going forward. **If you are not represented by counsel, and prefer to deal directly with me, I want to make it clear that nothing I *ever* say or do should be construed by you as an action taken for your benefit or in any way to further your interests. To the contrary, everything I do or say vis a vis you is solely for the benefit of my client, and contrary to your interests.**

With this said, the purpose of my communication today is to inform you that I am in the process of drafting a complaint that I will file within the next week against you based upon your ongoing abusive, disturbing, exploitative and frankly, horrific social-media influence campaign targeting Andrea Tantaros on behalf of Fox News under the direction of Bill Shine and Roger Ailes.

I have received reliable information that, in the face of media inquiries about your work, you are desperately trying to save your reputation by covering your tracks with respect to New Media Strategies's and Disruptor Capital's use of, inter alia, www.girlsoffox.com (and many other websites, twitter accounts and blogs) as "weaponized" digital tools for Fox News, Roger Ailes, and Bill Shine.

What the general public has yet to learn, however, is that after leaving New Media Strategies, you have continued your work of creating outrageously abusive and salacious fake social media campaigns against various "enemies," including Ms. Tantaros, identified to you by Bill Shine at the direction of Roger Ailes.

I intend to attach to my complaint a huge number of posts, tweets, blog commentaries, and other materials traceable to you and your contractors, and I have no doubt that the discovery tools afforded by the Federal Rules of Civil Procedure will provide even more evidence of your misconduct. The use of tools such as robots.txt files may work in covering your tracks with media, but they will fail with a federal judge.

Given your history of black-out drinking, perhaps you may not remember - though I am certain your wife, Burson, does - the conversation you had with Ms. Tantaros at your Nantucket home in August of 2013, as well as the detailed conversations you had with her when you unsuccessfully sought to hire her to head a new public affairs division at New Media Strategies -- a position ultimately accepted by Jessica Boulanger. In these conversations you explained your use of sock puppet accounts, fake websites and internet trolling to accomplish Fox News's goals. Significantly, in your August 2013 discussion with Ms. Tantaros, you admitted that you were now using Disruptor Capital to continue the work you had done for Fox News through New Media Strategies.

That you would make these admissions to Ms. Tantaros about the work you did for Fox News (but not against Ms. Tantaros at the time) is entirely credible considering the facts that:

(A) Ms. Tantaros worked with your wife in Washington;

(B) You and your wife were close enough with Ms. Tantaros to have her as a recurring guest in your home in Nantucket. Indeed, during her last visit there in August of 2013, while your pregnant wife slept, you drunkenly and repeatedly "hit on" Ms. Tantaros, causing her to leave your home immediately the next morning -- never to return; and

(C) You used to secretly forward emails between you and Bill Shine to Ms. Tantaros. Moreover, your widely-known drinking problem makes it all the more likely that you were incredibly indiscreet.

If you would like to explore a possible pre-litigation settlement of Ms. Tantaros's claims, you or your lawyer should reach out to me. In assessing your vulnerability, please do not be misled into concluding that I will be proceeding based upon the erroneous notion that 18 U.S.C. § 2261A provides a private right of action. Although your violation of federal criminal law will provide compelling support for Ms. Tantaros' punitive damages claim, we will be suing in the Southern District of New York for intentional infliction of emotional distress and prima facie tort. See Dennis v. Napoli, ___ A.D.3d ___, 2017 WL 887713 (1st Dep't 2017).

In the event that you choose to exercise some common sense, I look forward to hearing from you or your lawyer.

Judd Burstein
Judd Burstein, P.C.
1790 Broadway
New York, New York 10019
(212) 974-2400
(212) 974-2944 (Fax)
(917) 687-2981

Exhibit E

From: Andrea Tantaros <atantaros@gmail.com> **Date:** Wednesday, September 11, 2013 at 9:47 PM **To:** Pete Snyder <pete@disruptor.com> **Subject:** Re: info

Terrific. Joe sent dial in info to you. Talk then.

On Wed, Sep 11, 2013 at 4:37 PM, Pete Snyder <pete@disruptor.com> wrote:
Sure — can do noon tomorrow.

Pete Snyder
CEO Disruptor Capital (T) 703.659.1100 FB: FACEBOOK.COM/PETESNYDER TW: @PETESNYDER www.DISRUPTOR.COM

From: Andrea Tantaros <atantaros@gmail.com> **Date:** Wednesday, September 11, 2013 12:24 PM **To:** Microsoft Office User <Pete@disruptor.com> **Subject:** Re: info

I'd love a call. Could we make noon ET/9am PST work tomorrow? Joe and Tim would like to join. AJ has provided a lot more info to me, as well. Looks like there are a number of consultant options and there are ways to get syndicators like Compass to do the ad sales and affiliate work while we still own the show. We might not have as much flexibility with larger syndicators who will likely want to control more but this can all be discussed. There are a number of ways, like a buffet, it can be done. AJ would also be a good option to manage operations on the project along with the consultant, you and me. Then built out to a larger brand as we talked about.

If the time doesn't work can you send some other options that work for you?

On Wed, Sep 11, 2013 at 11:21 AM, Pete Snyder <pete@disruptor.com> wrote:

Amen to that. Think it would be wise to cobble together a "if you want to own your own thing, here's what it would take" plan. Will show upfront costs - then what the payoff will / can be if we execute properly in the future. My guess - there are substantial to huge benefits to this mid and long term - coupled w some short term disadvantages (ie its a start up not a rolls royce operation w all the bells and whistles). Again I'd be aiming higher - at media company vs just your show. Happy to continue the convo and/or plan a time to pow wow together. P

From: Andrea Tantaros <atantaros@gmail.com> **Sent:** Wednesday, September 11, 2013 8:51:35 AM **To:** Pete Snyder **Subject:** Re: info

He says he can now pay us. No money yet. But I still need to think of exit strategy.

On Tue, Sep 10, 2013 at 10:34 PM, Pete Snyder <pete@disruptor.com> wrote:
Great talking yesterday - tx for sending - anything new?
Pete Snyder
CEO
Disruptor Capital
On Sep 9, 2013, at 8:07 PM, "Andrea Tantaros" <atantaros@gmail.com> wrote: > Pete, > > I am putting together a list of consultants. There are some good names out there. AJ is helping think of more. > > As for the monthly cost of the A-town show, here is what I am estimating: > > EP, AJ Rice - $8708/month > > Producer, Christopher Coffey - $4200/month > > Matt Fox, sound engineer - 10k/month (Matt quit, BTW, and found a new job so we would need to hire someone else til we can get him back, likely at a cheaper rate). > > Host - 24,999.99/month plus rent stipend for studio in apt - $2750.00 > > Call screener - I am guessing he is paid very little bc it's a part time job - We could probably train Coffey to do that or an intern to save money. We can be lean and mean. Can't be more than 30k/year. > > There is also an engineer in Oregon who puts us all up and connects us. But if we find a good sound engineer, they can probably do that, too. > > Total

roughly is $55,657.97 > > As for someone to set up the technical side, Mark fired a guy named Douglas who is excellent. He is in Oregon but he came here and set me up in my apartment in NYC. He wants to move here, too. In a perfect world we'd get him to run operations. I know a sound engineer at Fox Talk Radio who wants to quit and come work for me so I could fill Matt's job for much cheaper. > > Let me know what else you need. > > AT >

Exhibit F

From: Andrea Tantaros <atantaros@gmail.com> **Date:** Monday, February 24, 2014 at 1:39 PM **To:** Pete Snyder <pete@disruptor.com> **Subject:** <no subject>

Pete - take a look and edit where you see fit. Also if you want me to mention you or wait til we're in person.

####

Hi Roger,

Spent some time this weekend talking about the sale of Whatsapp to Facebook for $19 billion. Most people at FNC likely don't even know what Whatsapp is, yet 450 million people are subscribers.

It got me thinking about what the channel can do to not just keep up, but also be an industry leader in how people watch TV/cable news. ESPN has an excellent model for this and they have made millions.

With Newscorp's acquisition of Storyful, a company that digs up and verifies news from sources like You Tube and Instagram. This model would not be difficult to replicate and monetize. In fact, it's a Ferrari engine when all we really need to do it would be a Lexus.

I don't have to tell you we are getting lapped in the online space. It's ok to have anchors promote Facebook pages and twitter handles but it isn't adding a dime to our bottom line or helping us truly stay ahead of the curve.

This is from the Washington Post on Sunday and is very telling:

Netflix believes that, in the future, consumers will subscribe to individual "channels" such as Netflix, Hulu and HBO Go and access them online. "Over the coming decades and across the world, Internet TV will replace linear TV," the company boasts on its Web site. "Apps will replace channels, remote controls will disappear, and screens will proliferate. As Internet TV grows from millions to billions, Netflix is leading the way."

I know I offered to help the channel a few weeks back when we met, and would love to talk to you more about this. If you're open to it I could put together a business plan for you to review that could contain some ideas for FNC.

Andrea

Exhibit G

8. ARBITRATION:

Any controversy, claim or dispute arising out of or relating to this Agreement or your employment shall be brought before a mutually selected three-member arbitration panel and held in New York City in accordance with the rules of the American Arbitration Association then in effect. The arbitrators shall issue a full written opinion setting forth the reasons for their decisions. Such arbitration, all filings, evidence and testimony connected with the arbitration, and all relevant allegations and events leading up to the arbitration, shall be held in strict confidence. Judgment may be entered on the arbitrators' award in any court having jurisdiction; however, all papers filed with the court either in support of or in opposition to the arbitrators' decision shall be filed under seal. Breach of confidentiality by any party shall be considered to be a material breach of this Agreement.

Exhibit H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM PART 58

----------X

ANDREA TANTAROS,

Plaintiff,

- against -

FOX NEWS NETWORK, LLC, ROGER AILES, WILLIAM SHINE, DIANNE BRANDI, IRENA BRIGANTI, and SUZANNE SCOTT,

Defendants.

----------X

INDEX NO. 157054/16

111 Centre Street
New York, New York
February 15, 2017

BEFORE:

THE HON. DAVID B. COHEN, J.S.C.

APPEARANCES:

FOR THE PLAINTIFF:

JUDD BURSTEIN, P.C.
5 Columbus Circle
New York, New York 10019

FOR THE DEFENDANTS:

DECHERT LLP
1095 Avenue of the Americas
New York, New York 10036
BY: ANDREW J. LEVANDER, ESQ.
LINDA C. GOLDSTEIN, ESQ.

QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd floor
New York, New York 10010
BY: PETER CALAMARI, ESQ.

JACK L. MORELLI
Senior Court Reporter

PROCEEDINGS

THE COURT: Good afternoon. This is Andrea Tantaros against Fox News Network, LLC, Roger Ailes, William Shine, Dianne Brandi, Irena Briganti and Suzanne Scott, under Supreme Court index 157054 of 2016. Starting with plaintiff's counsel, put your appearance on the record.

MR. BURSTEIN: Good afternoon, Your Honor. Judd Burstein, of Judd Burstein, P.C., for the plaintiff.

MR. LEVANDER: Your Honor, good afternoon. Andrew Levander with Linda Goldstein, from Dechert. We represent Fox and the other individuals except for Roger Ailes.

MR. CALAMARI: Peter Calamari, and sitting in the box is Joseph Sarles, from Quinn Emanuel, and we represent Roger Ailes.

THE COURT: Did you want to put your additional members or associates on the record as well or at least their names?

MR. LEVANDER: I think that's fine, Your Honor.

THE COURT: Okay. I read the papers, I'm ready for argument. At this time who is arguing for Fox, Mr. Levander?

MR. LEVANDER: Yes, Your Honor.

THE COURT: You may procedure.

MR. LEVANDER: Thank you, Your Honor. May it

please the Court, the motion before the Court, as the Court undoubtedly is aware, concerns a broad arbitration clause in an employment contract. Ms. Tantaros was very sophisticated, she signed that employment contract with Fox containing that express broad arbitration clause not once but twice, and she was represented by a sophisticated talent agency.

THE COURT: By broad you mean it doesn't reference any specific types of claims in it?

MR. LEVANDER: Correct.

THE COURT: That's one of the plaintiff's arguments, isn't it, that that is the failing of this ~~cause~~ clause?

MR. LEVANDER: Yes, but that's not the law. But if you want me to get to that right now I can, but I was going to build my way there. But I'm happy to fire away.

THE COURT: As you wish, counsel, we'll get to it.

MR. LEVANDER: The broad clause does say, any controversy, claim or dispute arising out of or relating not only to the agreement but her employment, and any such claim has to be arbitrated. Under both federal and state law that provision needs to be enforced. Indeed there is a strong policy in favor of arbitration reflected in the CPLR, Federal Arbitration Act and a plethora of cases over

the last 50 ~~year~~ 9 years or more, including the New York Court of Appeals case in Smith Barney versus Luckie, which the New York Court of Appeals directed the lower courts to "rigorous judicial enforcement of arbitration agreements." The Westinghouse case, New York Court of Appeals did the same, and the Supreme Court of the United States has also issued its opinions. I'm talking about the strong policy in favor of arbitration.

THE COURT: Is that the Hirschfeld case you're referring to?

MR. LEVANDER: That's the New York Court of Appeals case. Supreme Court of the United States would be Moses Cone Memorial Hospital, it would be Shearson/American Express versus McMahon. There is a plethora of cases, Your Honor. Indeed the 2nd Circuit has observed in Arciniaga versus General Motors, 460 F.3d at page 234, "It is difficult to overstate the strong federal policy in favor of arbitration." And that's the law in New York as well.

Based on those cases, those principles and the authority on point that I will now discuss, we believe that the motion to compel arbitration should be plainly granted. Indeed, Your Honor, plaintiff has flouted the terms of her contract, including the arbitration clause, in bringing this case, in the various publicity stunts she

has engaged in.

The argument that they make, however, ignores overwhelming precedent. I will focus on the three issues that counsel raises, as I understand them, as to why she should be allowed out of her arbitration clause and to be able to litigate in court.

As I understand it, her first argument is, although I'm compelled to arbitrate certain claims, I don't have to arbitrate sexual harassment claims. And that's because the words sexual harassment don't appear in the broad clause, as Your Honor referenced a few moments ago. That is simply not the law. Plaintiff does not cite a single case in which a Court has held that a broad employment arbitration clause in an employment agreement that encompasses any claim relating to her employment, does not encompass sexual harassment, whether or not the arbitration clause contains the words sexual harassment, it's just not a requirement of the law to the contrary.

She cites a couple of cases in which the Court has noted the full term of the language that the clauses arbitration clause, and some arbitration ~~clause~~ do have things ~~Things~~ like "any claim including but not limited to." But, for example, in Cicchetti versus Davis, which is a Southern District case in 2003, but the --

THE COURT: Isn't it sufficient if a clause says

essentially the same thing as her clause, if it says any claim and specifies a few, isn't that essentially the same?

MR. LEVANDER: In our view it's exactly the same whether it says including but not limited to or it doesn't have the including but not limited to, any claim means any claim and that's what we have here.

Indeed, in Cicchetti, one of the cases she relied on, while it drops a footnote that says, "The language has the including but not limited to sexual harassment." The analysis of the Court was that it was because the arbitration clause related to "all her employment." Precisely what the arbitration clause in this case does.

As I said, Mr. Burstein has not cited a single case in which a Court has said, okay, you have a broad thing that says any claim relating to employment. But you didn't put in the words sexual harassment and therefore, we're not going to allow arbitration of the sexual harassment claim; not a single one.

Indeed, in Tong versus S.A.C. Capital Management, which is a 1st Department case from 2008 which you cited in approval in your Siroy, decision recently, "The clause that was held to encompass claims under both the New York State and the New York City Human Rights

Laws," exactly the claims that are in this case, "was exactly the same as the clause in our case relating to anything under your employment agreement." No reference to sexual harassment. Nonetheless, the 1st Department ordered, compelled arbitration.

THE COURT: But how does the contract alleged fall within the scope of employment?

MR. LEVANDER: That's simple, Your Honor, if you just read the complaint. And the complaint, I will particularly refer you to, and that's the whole thing, but if you look at paragraphs 14 through 18 --

THE COURT: I've read the complaint, counsel.

MR. LEVANDER: It says, "Every act that occurred here occurred on the premises."

THE COURT: In New York.

MR. LEVANDER: Of Fox in New York.

THE COURT: I know.

MR. LEVANDER: And the claims are all based on our status as an employer. So this is quintessentially an employment place claim. This is not -- you know, he cites as an exception the case, for example, where an employee is off premises and there is a social interaction not part of business and a sexual assault is alleged. That's not what this case is about. What this case is about is, allegedly systematic conduct at Fox, at the news station,

that sexual harassment. And if it wasn't related to --

THE COURT: Are you contending that if the sexual assault took place in Fox's premises that that would fall within the scope of employment?

MR. LEVANDER: I actually think it would. But we don't have to cross that bridge in this case. The case here is, the only way we're liable is as an employer. This is quintessentially an employment case, therefore it is encompassed. And even Mr. Burstein doesn't make that argument -- but if he did make the argument that it was unrelated to employment, he would automatically lose his New York State, New York City Human Rights Law claims because they are only bringable [sic] against an employer.

So, the same is true in the 2nd Circuit's case called Oldroyd, 134 F.3d 72. And there the holding was a federal statutory whistleblower claim is encompassed by an arbitration clause that says, "Any claim arising under the employment agreement." No reference to harassment. No reference to whistleblower. No reference to anything else, just a broad clause; exactly as we have here.

We've cited to Your Honor a host of other cases which uniformly hold the same thing. There is a Fox case, there is a Gateson case, there is a Valdes case, all in the Southern District, in which arbitration has been compelled in harassment cases based on a clause that is

identical or indistinguishable from the clause in our case which is, "Any claim, controversy or dispute relating to your employment agreement or your employment."

The cases apply this principle uniformly. For example, Mr. Burstein cites the Coors case in the 10th Circuit. But the Coors case is exactly on point. It's not a harassment case, it's an antitrust case. There it says, any claim relating to the contract. The Court says, well, you're compelled to. In the antitrust case cited in the Supreme Court case in Mitsubishi, Supreme Court of the United States saying, you've got -- it doesn't matter that it doesn't say antitrust, it's related to the contract. End of story, you go arbitrate. That is the federal policy that's involved here. Indeed, Your Honor, your Siroy decision, I believe --

THE COURT: Which you smattered through the brief at every opportunity.

MR. LEVANDER: I may not have done it enough but I tried. But I think that it's pretty on point. In Siroy there was a forum selection clause which is similar to a --

THE COURT: But not the same.

MR. LEVANDER: Not the same. But you cited a bunch of the arbitration cases that are on point.

THE COURT: But there aren't a lot of forum

selection clauses.

MR. LEVANDER: But the principle was that was a forum selection clause which said any claim. It didn't include the sexual harassment claim. But you said nonetheless, this case gets shipped to New Jersey, I believe it was. And you cited, even though there was no reference to sexual harassment in the clause, and you cited Tong, the 1st Department case I mentioned a moment ago which is right on point and I think controlling here. The petition of Levitt, another arbitration case in which the same principle applied and you cited those two cases with approval as compelling your decision.

Now, there is also a suggestion in his brief that somehow because it's sexual harassment that deserves to be in a courtroom notwithstanding the arbitration clause, and that doesn't fly. In fact, the Supreme Court in 1991 in the Gilmore case specifically threw that principle out, rejected it and says, "Harassment claims by any other claims, discrimination claims, should be heard pursuant to arbitration if that's what the clause covers." And the New York Court of Appeals followed Gilmore shortly thereafter in Fletcher versus Kidder Peabody, a 1993 decision which, again, ironically, Mr. Burstein cites in his brief with approval.

Indeed, in Guyden versus Aetna, 544 F.3d in the

2nd Circuit 2008, the Court specifically held, "That the inability of an employee to publicly air their whistleblower claim under statute does not give rise to vitiating an arbitration clause." Right on point.

Second argument that he makes, as I understand it, even he describes it is unprecedented, I would describe it as frivolous, the notion that after the arbitration clause was signed, two years later after there is a torrent of public stunts and public appearances by plaintiff and her lawyer, in which even Mr. Burstein acknowledged that he would probably be violating the contract of his client, that the Fox News issued a statement that said, "We've already filed an arbitration claim against Ms. Tantaros."

THE COURT: Now, did that claim make it into the news? It seemed like it may not have, right?

MR. LEVANDER: If it was -- it did not.

THE COURT: Did that get reported in the end?

MR. LEVANDER: I never saw it.

THE COURT: Okay.

MR. LEVANDER: Whatever one's view of whether or not that anodyne statement is a violation of the confidentiality agreement in a contract, that's a contract claim that must be arbitrated, not a basis to vitiate an arbitration clause.

- J L M -

THE COURT: So, you send to arbitration a claim as to whether or not arbitration was vitiated by some waiver?

MR. LEVANDER: No, we've made an arbitration claim based on the fact that she published a book without getting preapproval and said that violated her contract. That's our pending arbitration claim. They then brought this case and in response to we issued -- after they were on TV, radio, newspaper --

THE COURT: Then you brought this motion?

MR. LEVANDER: And then we brought this motion. We never litigated anything about the defense of this case. We've never done anything but immediately bring an action to compel arbitration. The only way --

THE COURT: But how do you respond to plaintiff's argument that you waived your right to compel arbitration under the arbitration clause by violating the confidentiality of the arbitration?

MR. LEVANDER: Because the case law is overwhelming. Waiver only occurs when you litigate, okay? Making a statement is not litigation. Actually litigate, protracted litigation is the standard which actually prejudices the other party. I can cite, those are the exact words of the PPG Industries versus Webster case in the 2nd Circuit, Thyssen versus Calypso Shipping in the

2nd Circuit, and the New York Court of Appeals decision in Cusimano versus Schnurr. In fact, in Cusimano the New York Court of Appeals emphasized that the waiver turned on the protracted use of the courts. A statement out-of-court is not the use of the courts to the actual prejudice of the other party. That's the standard and that didn't occur here. Nothing was prejudicial.

THE COURT: Counsel, two more minutes and I think that you probably want to get to the claim as to the individuals.

MR. LEVANDER: Yes, I do.

THE COURT: Because you have several of them as well.

MR. LEVANDER: Yes. So, I also just want to point out before I do though, that there are at least two very good cases to read about that, "All acts of the parties subsequent to the making of the contract which raised issues of facts or law lie exclusively with the arbitrator." Here you have a post-contract statement, in fact, a post-arbitration statement. That's their basis, it goes to the arbitrator. We violated the contract, the arbitrator can find that. Finally, you can't avoid an arbitration clause by suing your employer, that's Black Letter Law also.

In Hirschfeld Products, which Your Honor

referred to earlier, against Mirvish, the 1st Department which was subsequently affirmed by the Court of Appeals explained there, "The attempt to distinguish officers and directors from the corporation they represent for the purposes of evading an arbitration provision is contrary to the established policy of this state." Subsequently in the Court of Appeals, the Court of Appeals affirmed that holding and said, that under New York and federal law the arbitration clause of the employer extends to quote, "Any agent of the employer." 88 NY2d at 156.

More recently still in DiBello versus Salkowitz in the 1st Department, the Court held, "The enforceability of the arbitration agreement is not affected by the statutory nature of the discrimination claims. And given the employment related nature of the claims, the individual employee defendant as an agent of the employer is entitled to demand arbitration of the claims against him, no less than the employer is entitled to demand arbitration of the claims against it. That is the 1st Department's holding in DiBello.

The 2nd Circuit has numerous cases holding to the same effect, including Ragone and Powers. Indeed, in the 2nd Circuit in Roby versus Lloyd's, which is one of the cases you cited with approval in Siroy, the Court stated, 2nd Circuit stated, "In this and other circuits

consistently have held that employees of any entity, employee of any entity that is party to an arbitration agreement are protected by that agreement."

The 2nd Circuit has also emphasized that when you're moving to compel arbitration the standard is even easier if the party that you were moving to compel against is the one that signed. So here she signed, she agreed to arbitration. Any claim to avoid arbitration is less strong under those circumstances.

THE COURT: You may conclude, counsel.

MR. LEVANDER: I'm going to hold the rest of my time for rebuttal. Thank you.

THE COURT: You may be seated.

Mr. Calamari.

MR. CALAMARI: Yes, Your Honor, I'll be very brief. I just join in the arguments of Mr. Levander. The cases are absolutely clear here. There is just no law to support the position of plaintiff's counsel. And I'll, if I may, reserve my time for rebuttal.

THE COURT: I believe we reserved three minutes for rebuttal on the defense side.

MR. LEVANDER: Thank you, Your Honor.

THE COURT: Okay. I think that you probably were a minute under, so I'll give you that additional minute if you need it, okay?

- J L M -

Mr. Burstein, you're up.

MR. BURSTEIN: I'll try and talk quickly and try and work backwards. I don't dispute that there is a presumption in favor of arbitration. But I also I don't think that the other side can dispute that one shouldn't have to arbitrate if you haven't agreed to arbitrate. Although there are many cases that say that an employer, an employee can be required to arbitrate against other executives, for example, when there is a broad arbitration clause; this case is different. Everybody is pointing to Siroy but let me tell you why Siroy is actually helpful to me. In Siroy you pointed out three different situations where admittedly in a forum selection clause where another nonparty to the agreement might be entitled to arbitration. The two that are sort of relevant is third-party beneficiary and the third which is so close that it's all interrelated. One could argue under normal circumstances that we might fall within the third category, but this case is different. I don't know if you've seen the entire agreement, Your Honor, and I have a copy.

THE COURT: I've seen all portions of the agreement that were in the papers, so I have everything that's in the record.

MR. BURSTEIN: Okay, well, what's in the record

then in our opposition papers is 15.1 of Ms. Tantaros's agreement. It's one of the exhibits to my ~~affidavit~~ affirmation. There are so many papers here.

THE COURT: Is it you're saying 15.1, "This agreement is non-assignable by performer"?

MR. BURSTEIN: Yes.

THE COURT: I'm looking at it.

MR. BURSTEIN: So what 15.1 says is, "That this agreement shall inure to the benefit of Fox's successors, assignees, affiliates." It says, "As used in this agreement the term 'affiliate' shall mean any company controlling, controlled by or under common control with Fox."

THE COURT: So what that would mean if Fox was acquired, right, and Fox's employees were covered, then the acquiring entity employees would be covered as well, right?

MR. BURSTEIN: No. Respectfully, I think that if, in fact, there were another provision in this agreement that protected employees, perhaps. But this provision can only be read one way, that this is an agreement, as some parties do, they have an agreement where they say there are no third-party beneficiaries and this agreement is only for the benefit of certain people. There is no definition of Fox in the agreement to include

employees or anyone else. That's why this case is fundamentally different than any other case, because --

THE COURT: But doesn't this provision deal with issues if Fox is acquired or merges or something else like that? How does that exclude employees?

MR. BURSTEIN: It does, because it's made a part of the agreement. And the part of the agreement that it's made a part of are standard conditions of employment. This is an agreement between Fox News and Andrea Tantaros. The agreement includes not only the part that is specific to Ms. Tantaros, but says the standard conditions of employment also apply. There are all sorts of provisions in here that are not talking about, you know, mergers, they are talking about when a performer can perform services. What rights the performer has. Indemnification, commissions, Internet restrictions, promotions, injunctive relief. This is all specific to the employee. And if an employer --

THE COURT: I think a lot of that stuff is blacked out in the papers.

MR. BURSTEIN: I can give you a full set.

THE COURT: It was redacted for a reason and it wasn't in the papers, so.

MR. BURSTEIN: But it's a public -- I wanted to be careful as to the other side since it's theoretically a

confidential agreement, I didn't want to put in anything other than what was absolutely necessary. But I think that Mr. Levander will agree, that this is not some single part of the agreement. I think it would be helpful to allow me to supplement the record with a copy of the entire agreement. Because you will see that it -- when two parties enter into a contract and they say this is only for the benefit of the two parties, and with respect to Fox it's only with respect to Fox and its affiliates and this is how we define Fox and affiliates, and there is no definition of Fox News. If you look at the first -- well, you don't have it but there is no definition of Fox as Fox including its employees.

THE COURT: I know you're trying to convince me that this agreement somehow excludes the employees. But it says this agreement is nonassignable by performer. Which means your client can't assign it but Fox can. But it doesn't say anything about whether employees are or are not considered. This deals with the assignment of the agreement to any future entity, which hasn't happened in this case. But it doesn't exclude -- show me how it excludes employees at this time.

MR. BURSTEIN: Well, there is one thing where it says it has the right to freely assign. I'm not relying on that language. I'm relying on the language which says,

"This agreement shall inure to the benefit of Fox's successors, assignees and affiliates." Affiliates is important, it's not just about selling the company. It's about, for example, I guess, 21st Century Fox or Fox Business News. They could have added "and employee." They could have defined and -- it's interesting, their reply papers are silent on this issue. You can't find anything on it.

So it seems to me that the plain language of this agreement, and you see this all the time in agreements when they want to exclude third-party beneficiaries, they want to keep people -- they want to make sure that this is only going to be for the benefit of the parties to the agreement, not give third parties rights. That is precisely what happened. And it's not remotely found in their reply. They've never addressed this issue. So, the record stands with my argument. The reason they haven't addressed this issue is, they know it would be frivolous to address it because that's what the agreement says.

Now, there is another important point here, this case, although it was given short shrift of the arguments of mine that were characterized, I didn't quite recognize. But one of the arguments --

THE COURT: That's why you get a chance to talk,

counsel.

MR. BURSTEIN: But one of the arguments that I do think is a question of first impression and is very important is the arbitration clause itself. Now, this is a situation --

THE COURT: This is the waiver claim?

MR. BURSTEIN: It's not a waiver claim.

THE COURT: It's not?

MR. BURSTEIN: It's a breach claim for the following reason. I mean --

THE COURT: But the breach has to result in a waiver, right?

MR. BURSTEIN: Yes. Well, excuse of performance.

THE COURT: Let's get to breach.

MR. BURSTEIN: You have, unlike any other kind of agreement I've ever seen, an arbitration clause that has an arbitration clause that has a strict confidentiality provision and says, "The violation of this clause will be a material breach of the agreement." Now, you'll never see that. And this is why it's important. The law, if you take the law generally, what do you have? You have a situation where a party claims a contract has been breached or he or she has been defrauded into agreeing to the contract. The law is very clear, that

doesn't do you any good in terms of getting out of an arbitration agreement unless you can show that the arbitration agreement itself was procured by fraud.

THE COURT: Let's talk about who is in breach here, counsel, because the other side says that you're in breach. When I say "you," I mean not just your client, your individual involvement in breaching that confidentiality. Typically in contract claims situations the focus is on who breached first, right? Who made the initial breach. Because that often excuses the other party from their breach, doesn't it?

MR. BURSTEIN: Yes, but the complaint --

THE COURT: How does that not apply here?

MR. BURSTEIN: For two reasons. One, the complaint alleges, and I can give you the paragraph, a prior breach which was the failure to provide a personal assistant over the three years. And that is --

THE COURT: But that's not a breach of the confidentiality provision or the arbitration clause, right? That would be subject to arbitration under this agreement. You agree to that?

MR. BURSTEIN: I agree that would be.

THE COURT: So, if your client wants to bring a claim that she wasn't given her assistant over that period of time, that's subject to arbitration.

- J L M -

PROCEEDINGS

MR. BURSTEIN: Yes, but my point is this, a general breach of confidentiality -- there is no breach of the confidentiality requirements of agreement and certainly not of that paragraph. It might give rise to some other kind of breach excusing performance or giving rise to damages. But when you have an arbitration clause which says that this is a material breach specifically of this arbitration clause, it relates solely to this arbitration clause, that is different. That's the equivalent of the sort of the converse where you say, okay, parties have disputes. But you can't get out of arbitration unless you can show fraud in the securing of the arbitration agreement. Similarly it's the same concept.

THE COURT: But doesn't your client's breach excuse any breach after that?

MR. BURSTEIN: No. For a number of reasons.

THE COURT: Isn't that Contracts 101?

MR. BURSTEIN: No -- I mean, yes, of course it's Contracts 101. But you have to look at the allegations. Again, this is not an issue for the arbitrator. This is an issue as to what this clause means, as to whether or not we're to be forced into arbitration. And the things they say that we said are not breaches of the confidentiality provision in the contract. And they --

- J L M -

THE COURT: Are you disputing that if the confidentiality provision is valid and they sought arbitration, that your conduct and the conduct of your client didn't breach that?

MR. BURSTEIN: Yes.

THE COURT: How?

MR. BURSTEIN: Because the confidentiality agreement is very limited. The confidentiality agreement says, "That the performer shall not directly or indirectly disclose, divulge, render or offer any knowledge or information to any other person or party concerning matters relating to any program or Fox affairs and plans."

Now, unless they're using the word affairs in the way that Roger Ailes had affairs, this does not relate to their Fox's affairs. That's one confidentiality provision. There is nothing in the record to suggest that Ms. Tantaros or I breached that provision. Then the other one is, "Ms. Tantaros shall not issue any statements or grant any interview concerning performances, services hereunder." No suggestion here that that was breached. Those are the only confidentiality provisions in the agreement.

So there is no breach of any confidentiality. The only breach of confidentiality is their admitted breach of trying to rebut legitimate statements that Ms.

Tantaros or I on her behalf, could make with divulging the existence of the arbitration and the terms.

How much time do I have so I make sure --

THE COURT: You have eight more minutes.

MR. BURSTEIN: So let me move on. If you want to talk about sort of the general principle. If you take their argument to a logical end, let's say Bill Shine or one of the other defendants could have raped Ms. Tantaros in the Fox building and that would be subject to arbitration because she was in the building.

THE COURT: Wait, that's an intentional tort and that's an assault, right? That's an assault. And there is lots of case law cited in both your briefs that takes assault out of the context of the typical arbitration clause.

MR. BURSTEIN: I'll give another one.

THE COURT: Is there any assault alleged in this case?

MR. BURSTEIN: No.

THE COURT: Any physical assault?

MR. BURSTEIN: No physical. She trips and falls coming out of the elevator because they didn't adequately -- they were negligent in some way. She wouldn't have tripped and fallen if she hadn't been an employee on their theory. That's arbitrable. Now, here

is what the case law says, everybody cites and of course Your Honor cites to the Tong case. That's really the major case here because it's 1st Department. But nobody, my adversaries haven't bothered to look at Justice ~~Freed~~ Fried's underlying decision, what the Appellate Division affirmed. And there they had an arbitration agreement, any dispute arising out of this agreement will be subject to arbitration. But as Justice ~~Freed~~ Fried wrote, "Among the conditions the agreement provides that Tong would not disclose any of S.A.C.'s confidential information during or after his employment." This information was defined to include any information relating to the business and personal affairs of any of the principals.

Nobody seems to have paid attention to what was actually being affirmed. There was an affirmation of a decision by Justice ~~Freed~~ Fried saying that the broad language of the arbitration agreement applying to breaches of the contract was covered. But the arbitration agreement in that case was radically -- I mean the underlying contract was radically different. So if you read Justice ~~Freed~~ Fried's opinion, you will see something that is just quite extraordinary and that makes all the difference in the world.

The other cases they have cited, like Oldroyd and Powers, they have a number of them, they are all

termination of employment cases. This is a different kind of case. We also have the tortious interference claim which is something different which is a tort claim, not a contract claim. It involves them going out and interfering with the sale of her book.

THE COURT: How is retaliation different than termination? Aren't those two sides of the same coin?

MR. BURSTEIN: Except that all the cases that they cite are termination clauses and all of those are essentially breach of employment agreements as opposed to here where there is no breach of contract claim.

Then, again, the other thing I want to say in my last few minutes is, that if Your Honor is inclined --

THE COURT: Speaking of that, five more minutes.

MR. BURSTEIN: If Your Honor is inclined to send us to arbitration, I would like the opportunity to amend based upon new information. I learned very recently, just two nights ago, that another one of my clients, who shall remain nameless, was subpoenaed. And I was told by the United States Attorney's office that there is an ongoing criminal investigation of Fox relating to all of these allegations, not just Ms. Tantaros', but all of the sexual harassment allegations. And I have a subpoena, it's ongoing relating to another client, although I suspect that Ms. Tantaros will be subpoenaed. But here is the

point, based upon my discussions with the prosecutors, and they didn't tell me what exactly what it was, but once I saw that it was the securities prosecutors I understood immediately what was going on here, which is that what Fox has done is enter into agreement, after agreement, after agreement, with victims of sexual harassment, not reported them in any of their SEC filings. Because what they do, as they offered Ms. Tantaros when they tried to settle the case, they keep them as employees, per se, so nothing ever gets reported.

Now, that's not what the U.S. Attorney says but that's what I think is going on. I now believe -- that not -- that I'm not saying it's necessarily not subject to arbitration, I believe I have a racketeering case here based upon that and the extortions of my client. There is a very strong case law that suggests in this case you will lose your job if you report sexual harassment, gives rise to a pattern of racketeering activity which this Court can look at, and then there are other claims. I have compelling evidence through confidential sources that Fox was involved in electronic surveillance of my client on her private communications in violation of 18 U.S.C. 2510, which has a private right of action. They have been -- just today The Times reported that they maintain fake news sites and also what are known as sock puppet accounts,

fraudulent Twitter accounts.

THE COURT: You made reference to that in your papers and the complaint extensively.

MR. BURSTEIN: Yes, but I have more information about that. I also have the fact that we allege that Fox has subsequently, and this is important, post-employment, has tortiously interfered with Ms. Tantaros's agreement with her speaking agency, who represents numerous other Fox talents and can only represent them with Fox's permission. That they have tortiously interfered with her ability to get speaking engagements.

I think that all of this information is very significant. I only need two weeks to amend. I think that if I can allege -- Your Honor, just said it, intentional torts don't fall within an arbitration clause. I didn't bring a RICO case before because I didn't think that I could establish a pattern of racketeering activity. Now that I know that the U.S. Attorney's office is issuing subpoenas and undergoing, according to the subpoena, investigating alleged violations of federal criminal law by Fox, and I figured out exactly what's going on, I can make a RICO case. I can make the argument that the conduct by Mr. Shine and others was an extortion under the Hobbs Act.

THE COURT: Two minutes.

- J L M -

MR. BURSTEIN: I got in under the bell. Unless Your Honor has any questions.

THE COURT: Not at this time.

Rebuttal.

MR. LEVANDER: Indeed, Your Honor.

May it please the Court, Mr. Burstein has gone way outside the record. I would note that the courts have held that RICO claims, if you could make one, which he can't, would be arbitrable as well.

THE COURT: I didn't have any briefing on that so I don't know the answer.

MR. LEVANDER: I'll represent that to you. And the antitrust cases follow RICO cases. First of all, we did address the question, he said it was not addressed, I suggest you look at page 22 of our brief when you have a chance, Your Honor. I would like to focus on Siroy and --

THE COURT: That's the reply brief you're referring to, counsel?

MR. LEVANDER: Yes, exactly. So, it doesn't say, as Mr. Burstein represented to Your Honor a moment ago, that the confidentiality issue, even if you ignore Contracts 101 and you ignore his outrageous behavior and all of that is a breach of the arbitration agreement, it's a breach of the agreement. So, therefore, it is a --

THE COURT: Wait. But it's in the arbitration

clause of the agreement.

MR. LEVANDER: But it's an agreement of a breach, breach of the agreement. And the courts have said over and over again, and I read to you the --

THE COURT: The nuance you're claiming, it's a breach of the agreement but not specifically a voiding of the arbitration clause?

MR. LEVANDER: Correct. It also doesn't void the arbitration clause. Only thing that voids an arbitration clause is if you are unconscionable in the way that you created the arbitration clause. Here, as I said, cited to you both federal and state cases, any post-contract conduct that you think is actionable is to be arbitrated. That is what the law is.

Indeed, Your Honor, Tong is right on point. It has nothing about harassment in it. It's a harassment case and the Court ordered, the 1st Department ordered the arbitration to occur. This is what you said about Tong in your Siroy opinion. First of all, you're talking about in the Siroy case, it's a harassment, discrimination case and you say, the language in Section 13, that's 13 of the contract, specifically encompasses "all claims," just like it does here, "arising out of or relating to the employment agreement." Exactly what we have here. Nothing about harassment.

- J L M -

Plaintiff's claims of employment discrimination, retaliation, clearly arise in and relate to her employment and are thus governed by Section 13 and covered by her employment agreement, citing Tong. You describe Tong as holding, "That since plaintiff's claims arose out of the events that occurred in the course of his employment by defendant and supervisor, the supervisors of the defendant, they were deemed subject to the employment agreement which covered any dispute or controversy arising out of or relating to the agreement." It's exactly the analysis here. All of her claims arise out of and are related to.

THE COURT: What about the tortious interference claim?

MR. LEVANDER: He conceded that's subject to arbitration in his earlier papers. And tortious interference is a tortious interference with the contract. So it relates to the contract. It's clear that everything is encompassed by the --

THE COURT: And it relates to particularly the book provision within the contract, right?

MR. LEVANDER: Right. We are enforcing the book provision and he's saying that enforcement of our contractual right, which is the subject of the arbitration clause, is a tortious interference with the other

contract.

THE COURT: Did you say earlier that your arbitration, your arbitration claim only relates to the book and not to the alleged harassment and retaliation claims?

MR. LEVANDER: When we first brought the arbitration claims that's exactly what it related to. When this goes forward, I hope in arbitration, it will be expanded, no doubt, to encompass some other things. I suggest, Your Honor, Mr. Burstein said that he waffled on whether or not his client violated the contract. But in Exhibit H --

THE COURT: He didn't waffle, he said that she didn't, but really avoided explaining how in a way that was persuasive. I might give him a chance, last chance on that since you raised it.

MR. LEVANDER: But Exhibit H to my reply affidavit attaches Mr. Burstein's comments to the press which said that she knows that she's taking a risk in violating her contract's confidentiality clause in making these statements. There is no question that she violated it and they knew that she was violating it when she got involved.

Also, the confidentiality agreement that was gone over by Mr. Burstein when he read it covers not only

arbitration but "All relevant allegations and events leading up to the arbitration." So it's broader than what he just said, it encompasses her claims, period.

Finally, I would note that Mr. Burstein has tried to inject into here all kinds of extraneous stuff that is not in the record. The fact that he has a male client that may have received a subpoena. Fox has not received a subpoena. Fox would clearly cooperate if there were a subpoena. But that he is trying to somehow make this case not about the arbitration clause, which it is, but to bring in something that has to do with another one of his clients, not this client and not a sexual harassment claim, is beyond the pale.

THE COURT: Time. I'm going to address Mr. Burstein one more time because --

MR. BURSTEIN: Could I have two minutes?

THE COURT: Two minutes. But I specifically want you to address the issue of the breach by your client.

MR. BURSTEIN: Sure. I want to make one thing clear, I never said it was a male client, that was Mr. Levander.

THE COURT: No, you didn't.

MR. BURSTEIN: I never said it was a male client and I want that to be on record.

- J L M -

Second of all, I would ask Your Honor, although neither party did it because I think that there were concerns about confidentiality, I think that both parties, for Your Honor to have a full record, should see the entire employment agreement because it really addresses --

THE COURT: Then you could have provided it to me at the time that you submitted the papers or asked for it to be submitted in camera and you haven't done that.

MR. BURSTEIN: But they haven't --

THE COURT: So explain to me how your client's breach is not a breach.

MR. BURSTEIN: My client's breach is not a breach because there is nothing that the other side has shown which makes clear, and if I could have a moment let me just look at what the exhibit that they have.

(Pause)

MR. BURSTEIN: Well, one of the problems, and maybe this is -- they don't put the full agreement in, so they only give you part of the agreement, they leave out the other part about confidentiality.

THE COURT: You did the same.

MR. BURSTEIN: I understand. But the point would be, you have nothing before you to show that she violated confidentiality. They haven't submitted any document. They have statements by me, but they haven't

provided the provisions of the agreement that talk about confidentiality. So they say it's a breach but there is nothing in their papers, that as far as I can tell, actually identified what would be a breach of confidentiality.

THE COURT: Okay. Can we take a five minute break at this time and then we'll go back on the record.

(Short recess taken)

THE COURT: On the record. First, I would like to commend counsel on extremely well-prepared, well-organized and capable argument made on the record today, as well as in the papers on the briefing of this case.

At this point in time I'm going to render my decision on the record. Plaintiff's employment at Fox was covered by an employment agreement that contained a valid, broad and unambiguous arbitration provision requiring that any controversy, claim or dispute arising out of or relating to this agreement or your employment shall be brought before a mutually selected three member arbitration panel. Ample case laws in both New York State and the Federal Courts has held that all the claims and controversies sought to be litigated by plaintiff fall within the terms of the parties broad arbitration provision. Including her claims under the New York State

Human Rights Law and New York City Human Rights Law for harassment and retaliation, as well as her claims for tortious interference, since those claims arose within the scope of plaintiff's employment and clearly fall within that scope.

All of the individual defendants, though they are not signatories to the arbitration agreement, can invoke the arbitration clause and compel arbitration. This would apply even if the claims against them were severed from the claims against Fox. The misconduct alleged by plaintiff relates to these individual's behavior as officers, directors and employees or agents of Fox, and they necessarily relate to their alleged conduct as agents of Fox News. Further, a careful review of the claims against the individual defendants shows that these claims are factually intertwined with the agreement and the claims against Fox News. The claims against the individual defendants involve the very same issues and circumstances. This principle applies equally to the employment claims and the tortious interference claims at issue in this case. Allowing such claims to proceed in court would be contrary to established public policy strongly favoring arbitration of such disputes.

Plaintiff's claim that the defendants waived arbitration by materially breaching the arbitration clause

is unsupported by any pertinent case law. That claim is without merit as the defendants have not engaged in protracted litigation that prejudiced the plaintiff. In any event, it was plaintiff who first involved the news media in this dispute in violation of the confidentiality provisions of the parties' agreement. Any remaining claims by ~~defendant~~ plaintiff to bring this case outside the scope of arbitration have been considered by the Court and have been found to be without merit.

Plaintiff's oral application made for the first time on argument to amend the pleadings is denied. That denial is without prejudice. Defendants' motion to compel arbitration of all of plaintiff's claims against all of the defendants pursuant to CPLR 7503 are granted. Thank you. Pursuant to law, this action is stayed pending its outcome of the arbitration.

You can order the transcript, counsel, submit it to me to be so ordered. Then, counsel, you'll have the opportunity to file your notices of appeal.

MR. BURSTEIN: Thank you, Your Honor.

THE COURT: Thank you, counsel.

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT.

JACK L. MORELLI, CM, CSR

J L M -

SO ORDERED

DAVID B. COHEN, J.S.C.

3-9-2017